

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11-9-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.5845 of 2004

and

WPMP Nos.6833 of 2004 and 880 of 2007

P.Kanagaraju

.. Petitioner

vs

1.The Chief Engineer
(Distribution)

Tamil Nadu Electricity Board
Madurai Zone
Madurai 7.

2.The Superintending Engineer

Theni Electricity Distribution circle
Tamil Nadu Electricity Board
Theni

3.The Assistant Executive Engineer

Tamil Nadu Electricity Board
Theni

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records pursuant to the impugned order of punishment issued by the 2nd respondent in Proc. Ku.No.U Ni A/Ni P3/U3/Ko.Marai/A.No.290/02 dated 5.12.2002 and the appellate order passed by the first respondent in Memo No.1106/43/D1/2003.7 dated 26.8.2003 and quash these orders and consequently direct the respondents to retain the petitioner in the post of Wireman retrospectively with effect from 5.12.2002 with full monetary benefits and other consequential service benefits.

For Petitioner : Mr.S.M.Subramaniam
For Respondents : Mr.M.Vaidyanathan
for TNEB

ORDER

This writ petition has been brought forth by the petitioner challenging the order of the second respondent made in Proc. Ku.No.U Ni A/Ni P3/U3/Ko.Marai/A.No.290/02 dated 5.12.2002 and also the appellate order passed by the first respondent in Memo No.1106/43/D1/2003.7, dated 26.8.2003, and consequentially direct the respondents to retain him in the post of Wireman retrospectively with effect from 5.12.2002 with full monetary benefits and other consequential service benefits.

2.The Court heard the learned Counsel on either side. The affidavit in support of the petition is perused.

3.From the submissions made by the learned Counsel for the petitioner and the averments in the affidavit filed in support of the writ petition, it could be seen that the petitioner was working as Wireman in the Office of the Junior Engineer, Erasakka Naickanur, Theni District. A criminal complaint was lodged against him alleging that on 11.10.2001, he was in a drunken mood, and he got into the Office and damaged the goods and other things in the office. Pursuant thereto, a case came to be registered and also taken on file in C.C.No.74 of 2002. On the said allegations, a charge memo was also issued by the department. Simultaneously, departmental proceedings were initiated, and charges were framed. The explanation was tendered by him. Not satisfied, an enquiry was conducted pursuant thereto, and he was found guilty as per the charges levelled against him. He was given a punishment of reversion to the post of Helper and reduction in the scale of pay for 3 years. Originally, he filed a writ petition before this Court challenging the suspension; but, it was dismissed, and the criminal case after the full trial, ended in acquittal. Subsequently, he preferred an appeal before the first respondent in respect of the punishment, and it was also dismissed. Under the circumstances, this writ petition has been brought forth.

4.The main contention put forth by the learned Counsel for the petitioner, is that in the instant case, while the criminal proceedings were initiated, the departmental enquiry should have been kept in abeyance; but, they have proceeded with the same and gave the punishment also; that subsequently, he was acquitted of the charges by the criminal Court; that in the proceedings before the criminal Court and before the department, the facts are exactly the same; that once the criminal Court has also acquitted him of the charges, consequently, he should be absolved from the charges levelled in the departmental proceedings also, but, not done so; that this has also not been considered by the appellate forum, and under the circumstances, the punishment imposed on him, has got to be quashed, and he has to be given all the benefits to which he is entitled to. In support of his contentions, the learned Counsel relied on a decision of the Apex Court reported in JT 1999 (2) SC 456 (CAPT. M PAUL ANTHONY V. BHARAT GOLD MINES LTD. AND ANOTHER).

5.The Court heard the learned Counsel for the respondents on the above contentions. It is contended by him that in the instant case, the criminal Court has acquitted him giving benefit of doubt; but, that cannot be taken into account in the departmental proceedings, where he was given sufficient opportunity; that there were sufficient grounds to hold that he was guilty of the charges levelled against him; that under the circumstances, the order passed by the second respondent and subsequently affirmed by the first respondent, does not require any disturbance, and hence, the writ petition has got to be dismissed.

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6.The Court paid its anxious consideration on the submissions

made.

7.It is not in controversy that the petitioner herein was originally serving as Wireman attached to the Junior Engineer's Office of the Electricity Board. There was an allegation made against him that on 11.10.2001, he got into the Office in a drunken mood, damaged the goods, caused mischief and also committed other criminal acts. Following the same, a criminal case came to be registered, and it was also taken on file in C.C.No.74 of 2002 by the Judicial Magistrate concerned. On trial, he was acquitted. After the alleged incident, a charge memo was issued by the department, calling for explanations. He also faced the departmental enquiry, where he was found guilty, and he was given punishment. After the imposition of the punishment, he challenged the same before the first respondent, and it was also affirmed.

8.This Court is of the considered opinion, after going through the materials available and hearing the submissions made, that it is a fit case where the punishment imposed on him, has got to be quashed for more reasons than one. In the instant case, there was an incident on 11.10.2001. Immediately, a criminal case was registered, and it was taken on file in C.C.No.74/2002. He was also acquitted on trial. There was another enquiry made departmentally. It was also on the same facts. This Court is able to notice that both the facts which were the basis for the criminal case before the Court in C.C.No.74/2002 and for the department enquiry, were exactly the same. Under the circumstances, the department should have waited till the disposal of the criminal proceedings, but not done so. Further, the criminal Court has found him not guilty. Now, the contention put forth by the learned Counsel for the respondents is that he has been acquitted giving benefit of doubt; but, that cannot be taken into consideration in the departmental enquiry. Now, at this juncture, it remains to be stated that all those facts which formed the basis for the departmental enquiry, were exactly brought to the notice of the criminal Court, and that Court has found that they have not been proved, and it has acquitted him. Once the petitioner has been found not guilty by the criminal Court, the departmental enquiry with haste, was proceeded. When the matter was brought to the notice of the appellate forum, it has lost sight of the same. As rightly pointed out by the learned Counsel for the petitioner, it is a fit case where the decision cited by him and reported in JT 1999 (2) SC 456 (CAPT. M PAUL ANTHONY V. BHARAT GOLD MINES LTD. AND ANOTHER), is squarely applicable, wherein the Supreme Court has held thus:

"If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case."

<https://hcservices.ecourts.gov.in/hcservices/>

9.In the instant case, it has not been done. Once the allegations made against him, were found to be not proved by a Court

of criminal law and that too, in a particular case where the departmental proceedings were also going on, this Court is of the considered opinion that it is a fit case where the punishment has got to be quashed. Accordingly, the orders of the second respondent and the first respondent are quashed.

10. In the result, this writ petition is allowed. No costs. Consequently, connected WPMPs are closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

nsv/

To:

1. The Chief Engineer
(Distribution)
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Madurai Zone
Madurai 7.
2. The Superintending Engineer
Theni Electricity Distribution circle
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Theni
3. The Assistant Executive Engineer
Tamil Nadu Electricity Board
Theni

+1cc to Mr.M.Vaidyanathan, Advocate Sr 57009
+1cc to M/s.S.M.Subramaniam, Advocate Sr 56609

AD (CO)
km/17.9.

WP No.5845 of 2004